

California Regional Water Quality Control Board
Santa Ana Region

November 16, 2000

ITEM: 4

SUBJECT: Cease and Desist Order No. 00-87, Requiring The Irvine Company, the California Department of Transportation, the California Department of Parks and Recreation, and the Laguna Beach Unified School District to Comply with the Ocean Plan Prohibition of Discharges of Waste to the Irvine Coast Area of Special Biological Significance (ASBS) (Crystal Cove).

EXECUTIVE SUMMARY

In 1974, the State Water Resources Control Board designated the ocean waters between Cameo Shores Drive and Abalone Point, in the unincorporated area of Newport Coast, Orange County, as the Irvine Coast ASBS (SB Resolution No. 74-32). The 1997 Ocean Plan, Chapter V, states, "Wastes shall not be discharged to areas designated as being of special biological significance." Further, the Ocean Plan Introduction states, "This plan is applicable, in its entirety, to point source discharges to the ocean. Nonpoint sources of waste discharges to the ocean are subject to ... Chapter V – Discharge Prohibitions." Thus, the explicit language of the Ocean Plan applies the ASBS discharge prohibition in Chapter V to both point and nonpoint source discharges.

Therefore, based on the Ocean Plan prohibition, staff have prepared this cease and desist order to prohibit new discharges of waste, including storm water and non-storm water runoff from developed areas, to the portion of the Irvine Coast ASBS that lies between Los Trancos Creek and Muddy Canyon Creek and require that existing discharges of wastes to this area be eliminated over the next 2 years.

DISCUSSION

The Ocean Plan was originally adopted by the State Water Resources Control Board in 1972 and was amended in 1978, 1983, 1988, 1990, and 1997. The purpose of the Ocean Plan is to protect the beneficial uses of the State's ocean waters by identifying water quality objectives; setting general waste discharge requirements; and listing discharge prohibitions. The Ocean Plan also established the concept of Areas of Special Biological Significance (ASBS). The definition of an ASBS is stated in the Administrative Procedures as "... those areas containing biological communities of such extraordinary value that no risk of change in their environment as the result of man's activities can be entertained." Finally, the 1997 Ocean Plan, within Chapter V, "Discharge Prohibitions" states that "Wastes shall not be discharged to areas designated as being of special biological significance."

The process of establishing ASBS took place between 1972 and 1974. The Irvine Coast and Newport Coast areas were not included in State Water Resources Control Board Resolution No. 74-28, the initial designation of ASBS. But after considering additional information, the State Board designated the Irvine Coast and Newport Coast as ASBS in Resolution No. 74-32, adopted one month later.

In reviewing the documentation that was produced by State Board and Regional Board staffs during the ASBS designation process, a general theme can be seen that emphasizes the highest level of protection that must be afforded to ASBS. This emphasis can be best demonstrated in a January 8, 1973 memorandum from Bill Dendy, the State Board Executive Officer, to Regional Board Executive Officers where he states that “While it is recognized that waste discharge requirements will provide adequate protection to the great bulk of state waters, those limited areas which warrant designation as areas of special biological significance can only be maintained, without risk of change resulting from discharge practices, by a discharge prohibition.” He further states that “Even the highest quality effluent (approaching in quality that of unadulterated fresh water) will have a toxic effect on marine life forms which are unable to adapt to changing salinities.”

It is important to note that the revised procedures for ASBS authorized in the companion State Board Resolution No. 74-27 include the statement that “Discharge of waste from nonpoint sources, including but not limited to storm water runoff, silt and urban runoff, will be controlled to the extent practicable”. But subsequently adopted versions of the Ocean Plan, including the current plan, expanded the discharge prohibition to apply to both point and nonpoint waste discharges.

Regional Board staff are therefore proposing this cease and desist order, prohibiting all new discharges of waste to the Irvine Coast ASBS, between Los Trancos Creek and Muddy Canyon Creek, and requiring that all existing discharges of waste be eliminated over the next two years. The existing discharges in this area identified by Regional Board staff are:

A thirty-inch diameter, reinforced concrete pipe that discharges runoff from The Irvine Company’s Crystal Cove development to Los Trancos Creek just above the mean high tide line;

A three-foot by four-foot box culvert that discharges runoff from The Irvine Company’s Crystal Cove development and Pacific Coast Highway to the beach at Crystal Cove just south of Los Trancos Creek;

A twenty-four-inch diameter, reinforced concrete pipe that discharges runoff from The Irvine Company’s Crystal Cove development and Pacific Coast Highway to the bluffs above Crystal Cove and subsequently to the beach below;

Several storm drains along Pacific Coast Highway that discharge to the bluffs above Crystal Cove and subsequently to the beach below;

Drainage from the El Morro Elementary School that currently enters a storm water catchbasin inlet on Pacific Coast Highway and discharges to the bluffs above Crystal Cove and subsequently to the beach below; and,

An unknown number of discharge points from facilities at Crystal Cove State Park that drain to Crystal Cove, including parking lots, public showers and maintenance facilities, as well as runoff and septic tank/subsurface disposal system discharges from bungalows in the ‘historic district’ of Crystal Cove State Park.

Order No. 00-87 provides a schedule for elimination of existing waste discharges and prohibits all new discharges to the Irvine Coast ASBS. This order implements the waste discharge prohibition contained in Chapter V of the Ocean Plan.

RECOMMENDATION

Staff recommends that the Regional Board adopt Order No. 00-87 as presented.

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

CEASE AND DESIST ORDER NO. 00-87

Requiring The Irvine Company, the California Department of Transportation, and the California Department of Parks and Recreation to Cease and Desist From Discharging or Threatening to Discharge Wastes Directly to Crystal Cove, Part of the Irvine Coast Area of Special Biological Significance

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board), finds that:

1. The area of coastal waters generally between Cameo Shores Road, in the City of Newport Beach and Abalone Point, in the City of Laguna Beach, is designated as the Irvine Coast Area of Special Biological Significance (ASBS) (Figure 1) pursuant to State Water Resources Control Board (State Board) Resolution Nos. 74-28 and 74-32. Areas of Special Biological Significance are defined as “Those areas designated by the State Water Resources Control Board as requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable.”
2. The Irvine Company has started the development of the Crystal Cove development which is approximately bounded on the north by Los Trancos Creek, on the east by the San Joaquin Toll Road, on the south by Muddy Canyon Creek and on the west by Pacific Coast Highway. Both existing and planned drainage facilities of this development will result in the discharge of storm water and non-storm flows directly to the ASBS via several discharge points. These discharge points include: a 30-inch reinforced concrete pipe that discharges to Los Trancos Creek immediately above the ASBS; a 3-foot by 4-foot box culvert that discharges to the beach southeast of Los Trancos Creek; and a 24-inch reinforced concrete pipe that discharges to the bluffs above the ASBS northwest of Muddy Canyon Creek (Figure 2).
3. Pacific Coast Highway parallels the ASBS to the northeast. The California Department of Transportation (Caltrans) maintains the highway and is responsible for the drainage facilities that transport storm water and non-storm water flows off Pacific Coast Highway and to several reinforced concrete and reinforced metal pipes, which discharge to the bluffs above the ASBS, to Los Trancos Creek immediately above the ASBS or to the Crystal Cove beach (Figure 2).
4. The California Department of Parks and Recreation (State Parks) owns and manages the Crystal Cove State Park and Beach, which includes part of the Irvine Coast ASBS. Direct discharges to the ASBS from State Parks’ facilities include runoff from parking lots, public showers and maintenance facilities, as well as runoff and septic tank/subsurface disposal system discharges from bungalows in the ‘historic district’ of Crystal Cove State Park.
5. The Water Quality Control Plan for Ocean Waters of California (Ocean Plan), State Board Resolution No. 97-26, last amended in 1997, establishes beneficial uses and water quality objectives for waters of the Pacific Ocean along the California Coast. Chapter 5 of the Ocean Plan identifies discharge prohibitions and states “Waste shall not be discharged to areas designated as being of special biological significance.”
6. The aforementioned discharges to the Irvine Coast ASBS may contain waste, and as such threaten to violate or violate the discharge prohibition in the Ocean Plan. This order, therefore, requires the dischargers to eliminate any direct discharges of waste to the Irvine Coast ASBS.

7. The Regional Board has notified the dischargers and interested agencies and persons of its intent to issue this order and has provided them with the opportunity for a public hearing and to submit their written views and recommendations.
8. The Regional Board, in a public hearing, heard and considered all comments pertaining to this matter.
9. This order is an action for the protection of the environment and is categorically exempt from the California Environmental Quality Act, pursuant to Section 15321, Chapter 3, Title 14 of the California Code of Regulations.

IT IS HEREBY ORDERED, pursuant to Section 13301 of Division 7 of the California Water Code, that the The Irvine Company, the California Department of Transportation, and the California Department of Parks and Recreation shall cease and desist from threatening to violate or violating the waste discharge prohibition specified in the Ocean Plan as follows:

- a) Direct discharges of waste to the Irvine Coast ASBS from areas where construction has not been initiated as of November 16, 2000 are prohibited;
- b) Direct discharges of waste to the Irvine Coast ASBS that result from areas where construction began after November 16, 1996 shall cease by November 16, 2001; and,
- c) Direct discharges of waste to the Irvine Coast ASBS from areas (including roadways) where construction began on or before November 16, 1996, shall cease by November 16, 2002. Affected dischargers shall submit plans by May 16, 2001 for eliminating these discharges of waste. The plans shall include detailed proposals and time schedules for eliminating the discharges and shall be implemented as approved by the Executive Officer.

If, in the opinion of the Executive Officer, any of the dischargers listed in this order fail to comply with this order, the Executive Officer is directed to file a complaint assessing administrative civil liability or to request that the Attorney General pursue judicial enforcement action against that discharger, including an injunction and civil monetary penalties, if appropriate, pursuant to Section 13331 or 13350 of the California Water Code.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on November 16, 2000.

GERARD J. THIBEAULT
Executive Officer

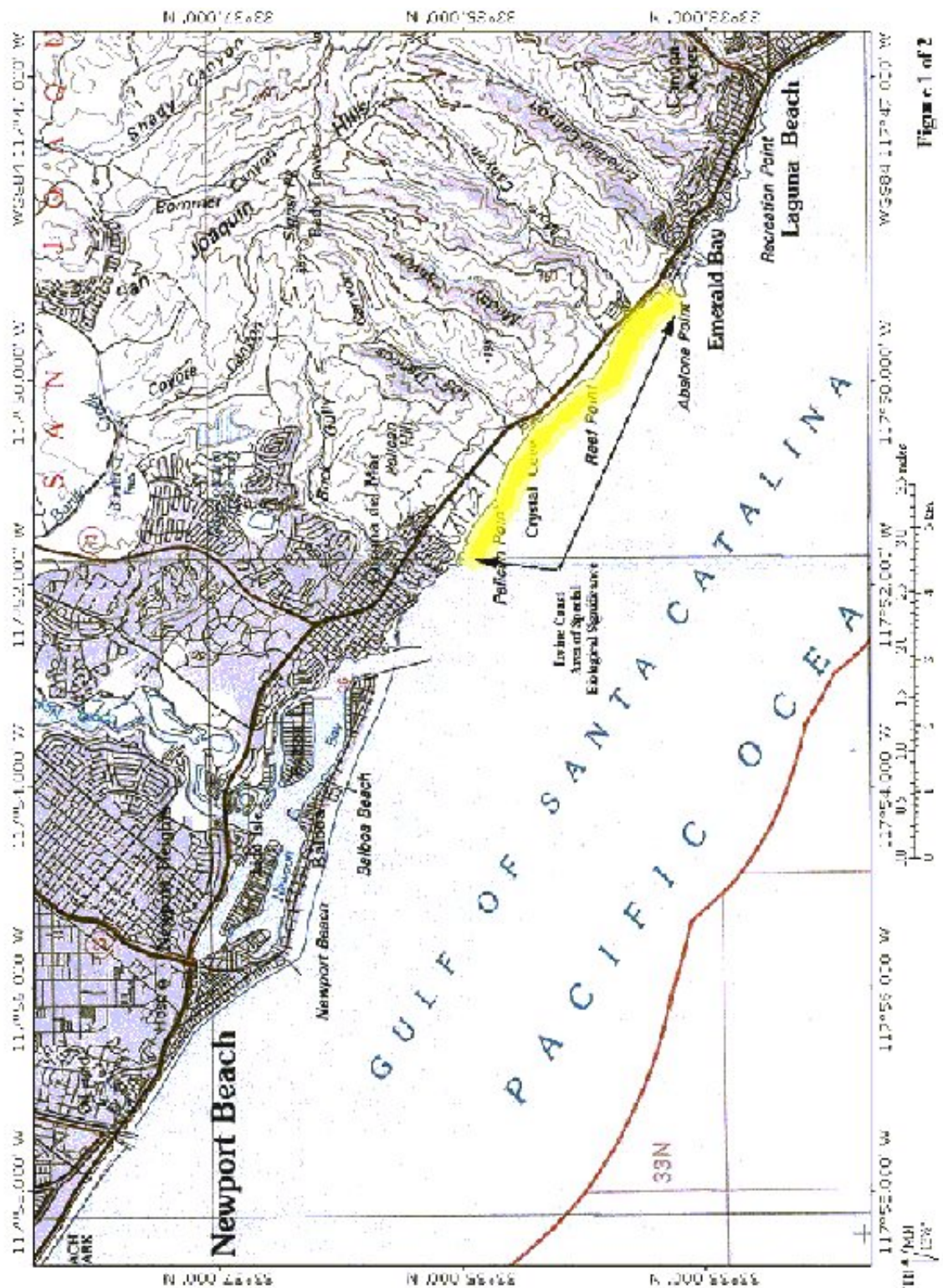


Figure 1 of 2

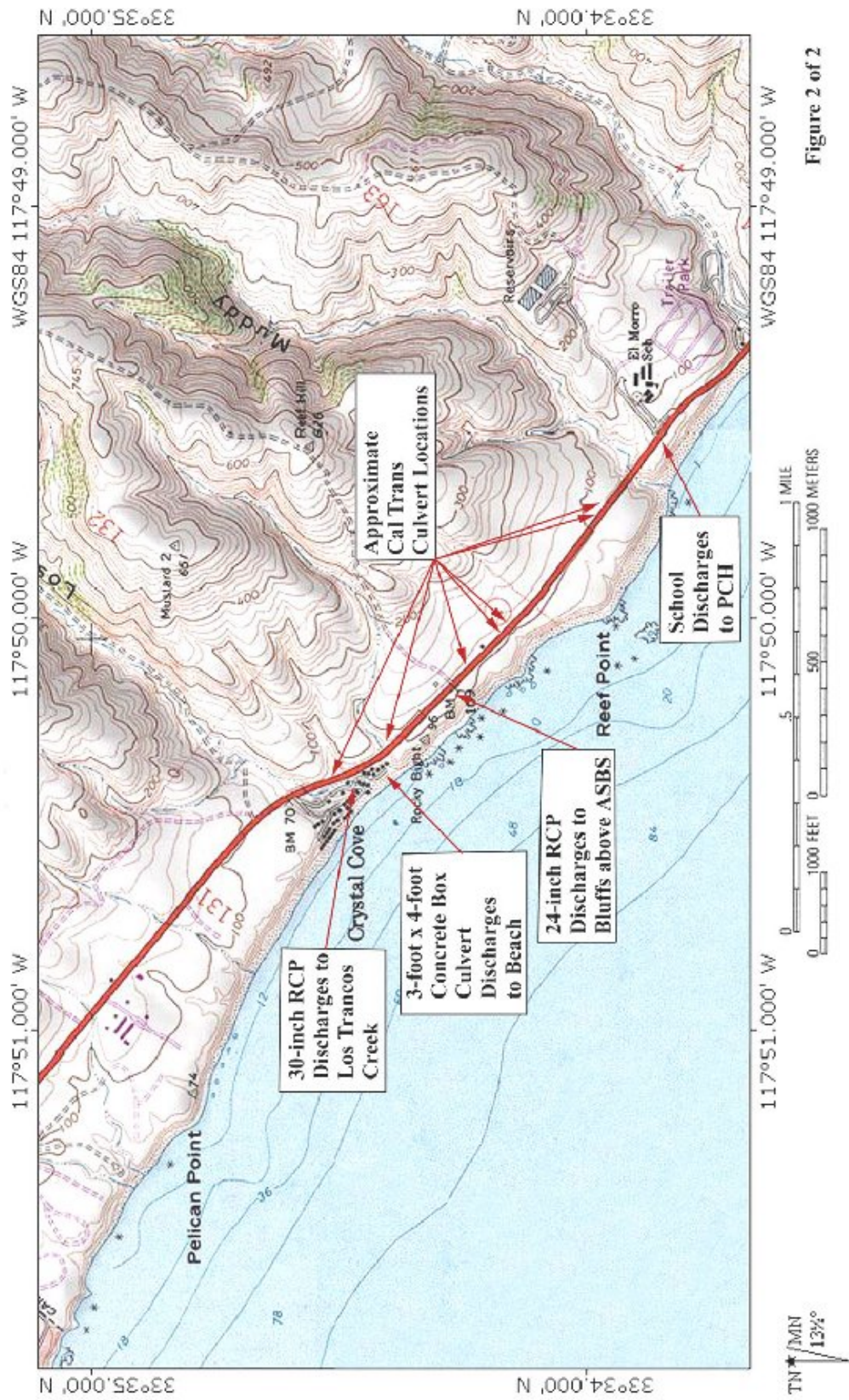


Figure 2 of 2